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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x 07 Civ. 1296 (CLB)
ARAZ ALALI,

Plaintiff,

-against-

**AFFIDAVIT OF
ROBERT GAZZOLA**

ROBERT GAZZOLA, individually, PATRICK J.
CARROLL, individually, and the CITY OF NEW
ROCHELLE, New York,

Defendants.

-----x

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER)

ROBERT GAZZOLA, being duly sworn, deposes and says:

1. I have been a member of the New Rochelle Police Department ("NRPD") since 1986, and since 2002 have served as a Captain, and the Commander of the Patrol Services Division, in the Department.

2. As such I have personal knowledge of the facts set forth below.

Performance Evaluations

3. Plaintiff Araz Alali ("Alali") joined the NRPD on February 10, 2002.

4. Alali suffered an injury on July 28, 2003, and was not on duty for the remainder of 2003 and more than half of 2004. He returned to light duty on September 23, 2004, and to active duty on October 1, 2004.

5. Alali received a performance evaluation for the period November 26 to December 31, 2004. A copy of the 2004 evaluation is attached as Exhibit O.

6. On or about August 31, 2005, Alali's evaluating supervisor, Sgt. Edward Austin, was assigned to ride along with Alali to review his performance.

7. On the basis of this ride-along review, Sgt. Austin prepared a "letter of counsel" dated September 29, 2005. A copy of the letter of counsel is attached as Exhibit P.

8. On or about November 9, 2005, I met with Alali, Sgt. Austin and Lt. Schulman to discuss the letter of counsel. At that meeting, Alali was advised that his failure to conform with the specific expectations outlined in the letter of counsel could lead to a "below standard" evaluation.

9. Attached as Exhibit Q is a copy of Alali's employee performance evaluation for the period January 1 through December 31, 2005.

10. Attached as Exhibit R is a copy of Alali's employee performance evaluation for the period January 1 through May 31, 2006. An interim evaluation for 2006 was necessitated by Alali's below standards rating for the prior year.

11. Attached as Exhibit S is a copy of Alali's employee performance evaluation for the period January 1 through December 31, 2006.

12. Attached as Exhibit T is a copy of Alali's employee performance evaluation for the period January 1 through May 31, 2007. An interim evaluation was necessitated by Alali's below standard rating for the prior year.

13. Attached as Exhibit U is a copy of a memorandum that I wrote, dated July 25, 2007, concerning Alali's employee performance evaluation for the period January 1 through May 31, 2007.

The Tools for Tolerance Seminar

14. Alali was assigned to attend a seminar entitled Tools for Tolerance at the New York Tolerance Center held on November 30, 2005.

15. Besides Alali, eighteen (18) additional members of the NRPD were assigned to attend the seminar. Attached as Exhibit Y is a document containing the list of all the officers who were assigned to attend the seminar on various dates during October and November 2005, as well as a brief seminar description.

The NRPD Post Patrol Book

16. The NRPD maintains a "Post Patrol Book" which lists recognized foot patrols within the City. Attached as Exhibit Z is a copy of certain pages from the NRPD Post Patrol Book, revised March 2002.

17. Union Avenue, between 9th Street and Warren Street, lies within recognized foot posts that are included within Beat 7 and Beat 8.

18. As stated on page 1 of the Post Patrol Book, additional walking posts may be created on a temporary basis as the need arises.

19. Foot patrols may be assigned during any of the three 8-hour tours of duty maintained by the NRPD.

Tuition Reimbursement Plan

20. A copy of Article X, Section 11, from the current agreement between the City of New Rochelle and the New Rochelle Police Association (the "PBA Agreement") is attached as

Exhibit AA.

21. Article X, Section 11, of the PBA Agreement contains a tuition reimbursement plan, under which officers are entitled to reimbursement for college-level course work credited towards an undergraduate or graduate degree in Criminal Justice or Public Administration.

22. To be eligible for reimbursement, course work must be approved in advance by the Police Commissioner, successfully completed, and the officer must submit proof of course cost, content and grade received.

23. Under Section 11(G) of the tuition reimbursement plan, the "total amount of City tuition reimbursement that may be approved for the unit membership as a whole shall not exceed \$30,000 for 2005 and \$40,000 per year effective 2006." Ex. AA.

The Disciplinary Charges; Reckless Driving Charge

24. I executed disciplinary charges and specifications against Alali on February 15, 2007. A copy of the charges and specifications is attached as Exhibit N.

25. The process of drafting the charges and specifications started within a few days after August 29, 2006 -- the date Alali declined to accept command discipline in connection with an incident that occurred June 15, 2006 -- when outside counsel was sought to prepare the charges.

26. Attached as Exhibit W is a copy of video taken by the in-car camera installed in the police vehicle Alali was driving on June 15, 2006.

Provisions from the Rules & Regulations, Manual of Procedure and Administrative Manual

27. Attached as Exhibit D is a copy of Section 8.2 of the NRPD Rules & Regulations, in effect as of August 1, 2002.

28. Attached as Exhibit F is a copy of Section 1.5 of the NRPD Rules & Regulations, in effect as of October 29, 2002.

29. Attached as Exhibit H is a copy of Section 1.9 of the NRPD Rules & Regulations, in effect as of December 23, 2002.

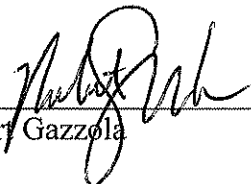
30. Attached as Exhibit J is a copy of Article 2.03 of the NRPD Manual of Procedure, in effect as of January 19, 2005.

31. Attached as Exhibit X is a copy of Article 2.11 of the NRPD Manual of Procedure, in effect since September 2001.

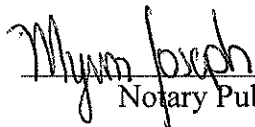
32. Attached as Exhibit L is a copy of Section 2.3 of the NRPD Rules & Regulations, as of April 14, 2005.

33. Attached as Exhibit V is a copy of Section 13.1 of the NRPD Administrative Manual.

WHEREFORE, for the reasons set forth above and in the motion papers submitted on my behalf, I respectfully request that the Court grant Defendants' motion for summary judgment on grounds of qualified and absolute immunity.


Robert Gazzola

Sworn to before me this
27 day of July 2007


Notary Public

